IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT, *et al.*,
Petitioners,

v.

ESSEX COUNTY WELFARE BOARD,
Respondent.

On Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR STATE OF NEW JERSEY AS *AMICUS CURIAE*

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Interest of the *Amicus*

This case presents a significant question regarding the administration by the State of New Jersey of its federal "categorical assistance" programs. These programs include Old Age Assistance (OAA), 42 U.S.C. 301, *et seq.*, Aid to Families with Dependent Children (AFDC), 42

U.S.C. 601, *et seq.*, Aid to the Blind (AB), 42 U.S.C. 1201, *et seq.*, and the immediate subject of this case, Aid for the Permanently and Totally Disabled (APTD), 42 U.S.C. 1351, *et seq.*

Unlike the Old Age, Survivors and Disability Insurance program (hereinafter social security) which is federally administered, the categorical assistance programs are administered at the state and local level. In fact, each individual state is free to determine whether it will participate at all in these programs and thus whether its citizens will be entitled to benefits thereunder. *King* v. *Smith*, 392 U.S. 309 (1968). Once a state elects to participate, however, it becomes subject to a detailed set of federal statutes and regulations governing the administration of the programs. *Townsend* v. *Swank*, 404 U.S. 282 (1971).

The State of New Jersey elected to participate in the program of Aid to the Permanently and Totally Disabled immediately after its enactment by Congress in 1950. Ch. 139, N.J. Laws of 1951. The salient portions of the New Jersey statutes relating to APTD closely tract the language of the governing federal statutes (compare N.J.S.A. 44:7-5, N.J.S.A. 44:7-39 to N.J.S.A. 44:7-42 with 42 U.S.C. 1351, *et seq.*), and since that time the New Jersey program has been approved by the Department of Health, Education and Welfare on a periodic basis. Pursuant to the New Jersey statute, a person is eligible for APTD who (1) is needy (N.J.S.A. 44:7-38) (2) is residing in New Jersey and is between 18 and 65 years old (N.J.S.A. 44:7-38), (3) is permanently and totally disabled by reason of any physical or mental defect, disease, or impairment other than blindness (N.J.S.A. 44:7-38), (4) is without adequate support (N.J.S.A. 44:7-5(b)), and (5) has not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance or of

evading responsibility to repay the welfare agency for assistance granted (N.J.S.A. 44:7-5(f)).

A state is allowed either to adminster the categorical assistance programs itself or to delegate that responsibility to local political subdivisions, but in either event it must designate a "single state agency" to coordinate and supervise the programs. 42 U.S.C. 1352(a)(3). The New Jersey Legislature has delegated primary responsibility for the administration of the categorical assistance programs to county welfare boards, such as the respondent, Essex County Welfare Board, and the Division of Public Welfare in the State Department of Institutions and Agencies has been designated the "single state agency" to coordinate and supervise administration by the county board. N.J.S.A. 30:4B-2. It is the view of the Division of Public Welfare, for which the Attorney General of New Jersey acts as sole legal advisor, that the discharge of its responsibility to coordinate and supervise the categorical assistance programs encompasses participation in major litigation, such as this case, which arises out of the administration of the programs.

The State of New Jersey also has a direct fiscal interest in this case. Whereas social security is funded solely by contributions of the federal government (added to employer and employee contributions), the categorical assistance programs are jointly funded by federal, state and local government. 42 U.S.C. 1353. The specific funding arrangement now in effect in New Jersey requires the State to pay three-eighths and the county where the welfare recipient resides one-eighth of the total cost, with the federal government providing the remaining one half. N.J.S.A. 44:7-40. The State of New Jersey's contribution to the categorical assistance programs for the fiscal year 1970-1971 was $135 million.

One method employed by the State of New Jersey to preserve the fiscal integrity of its welfare programs is to require recipients to execute agreements to reimburse the county welfare boards for any sums paid as assistance. N.J.S.A. 44:7-14.* Pursuant to such agreements, the state during fiscal year 1970-71 recovered $3.5 million previously paid under the categorical assistance programs. Included in this sum was $279,868 recovered from social security benefits comparable to those involved in this case. While this sum represents only a small percentage of the total appropriations by the State of New Jersey for the categorical assistance programs, it is a significant amount of money. Thus the State of New Jersey has a substantial fiscal interest in the outcome of this case.

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* Petitioners in this case are in no way attacking the state requirements relating to such "Agreements to Reimburse" or the specific Reimbursement Agreement executed by Mr. Wilkes prior to receiving disability assistance in this case.

When the original categorical assistance programs in the 1935 Social Security Act were enacted by Congress, most states already had enacted legislation providing some manner in which they could obtain reimbursement from a recipient for the amount of assistance extended. For a summary of the provisions of state acts as of June 1, 1934, see Report to the President of the Committee on Economic Security, p. 68 (1935). When the categorical assistance programs were enacted, such reimbursement provisions were made applicable to the states' administration of these programs.

ARGUMENT

The Supreme Court of New Jersey correctly held that an individual may not receive overlapping benefits for the same period of time under the Federal Old Age, Survivors and Disability Insurance and Aid to the Permanently and Totally Disabled programs, even where the duplicate benefits under the Old Age, Survivors and Disability insurance program are paid in a lump sum.

This case concerns two federal financial assistance programs under the Social Security Act designed to help persons who are disabled—the disability benefit provisions of the Old Age, Survivors and Disability program (social security) and the federal categorical assistance program of Aid to the Permanently and Totally Disabled (APTD). Social security provides benefits, regardless of need, out of a fund comprised of contributions by employers, employees and the federal government, and APTD provides assistance payments to needy disabled persons out of monies appropriated by the federal government and the states which participate. Basically then, the programs are complementary means through which disabled persons may receive financial assistance from the federal government.

The original social security program enacted in 1935, which had most of the attributes of a publicly-run private insurance program, provided only old age benefits. The persons it was intended to serve were the thousands of people who had worked all their lives but had seen their savings disappear during the depression in the collapse of the stock market and bank failures. See generally Presidential Message to Congress, June 8, 1934 (73rd

Cong., 2nd Sess.); Report to the President by Comm. on Economic Security (1935), pp. 38-39. However, there were millions of needy aged persons who could not qualify for social security, because they had not been employed for the required period. Moreover, the states which had enacted legislation to provide benefits for the needy aged found themselves unable to discharge this responsibility due to the fiscal pressures generated by the depression. Report to the President by Comm. on Economic Security (1935); Hearings on H.R. 7260 Before Sen. Comm. on Finance, 74th Cong., 1st Sess. 1935; Hearings on H.R. 7260 Before House Comm. on Ways and Means 74th Cong., 1st Sess., 1935. Therefore, at the same time it enacted social security, Congress enacted a complementary program of Grants to States for Old Age Assistance to provide benefits to the needy aged who could not qualify for social security. The evident intention of Congress in enacting the two measures was to unify the resources available from states, private enterprise and the federal government in order that the hardships of old age, which had been seriously aggravated by the depression, would be lessened. See Hearings on S. 1130 Before State Finance Committee, 74th Cong., 1st Sess., pp. 87, 241; Hearings on H.R. 4120 Before House Committee on Ways and Means, 74th Cong. 1st Sess. (1935) p. 55. Congress intended at the same time to ease the economic burden on states which were attempting to provide for their aged poor citizens and to assure that the program which was adopted would not expand in cost beyond the fiscal capacity of the states or the federal government. See Hearings on S. 1130 Before Senate Finance Committee, 74th Cong., 1st Sess. (1935) pp. 85-86; Hearings on H.R. 4120 Before Comm. on Ways and Means, 74th Cong., 1st Sess. (1935) pp. 87, 227-228, 241, 897.

It was made clear shortly after the enactment of the original Social Security Act that the categorical assistance programs are intended to provide benefits only as a last resort for needy persons who have neither earnings, savings or any other source of income, including social security, to meet the necessities of life. The first critical amendment of the Act provided that a State plan for old age assistance must:

> . . . provide that the State Agency shall, in determining need, take into consideration any other income and resources of an individual claiming old-age assistance . . ." Amendment of Aug. 10, 1939, Ch. 666, Title I, § 2, 53 Stat. 1360 (42 U.S.C. 302(a)(10(A)). See remarks in debate on amendment in House of Representatives at 84 Cong. Rec. 6704-6705, 6850, 6922 (1939).

Similar provisions were included in the enabling legislation for every other categorical assistance program (42 U.S.C. 302(a)(10)(A); 42 U.S.C. 602(a)(8); 42 U.S.C. 1202(a)(8)) including Aid to the Permanently and Totally Disabled. 42 U.S.C. 1352(a)(8). The same policy is reflected in the provisions which preclude any recipient from receiving benefits under more than one categorical assistance program at the same time. 42 U.S.C. 602(a)(12); 42 U.S.C. 1202(a)(7); 42 U.S.C. 1352(a)(7).

The basic congressional intent to prevent the payment of excessive benefits under the categorical assistance programs also has been noted by this court. See *e.g. Jefferson* v. *Hackney*, —— U.S. ——, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972).

The original complementary social security and categorical assistance programs for the aged were later expanded to provide benefits for the disabled. In 1950 Con-

gress enacted a categorical assistance program of Grants to the States for the Permanently and Totally Disabled. Act of Aug. 28, 1950, Ch. 809, Title III, § 351, 64 Stat. 555. Six years later, the social security program was amended to provide benefits for the disabled. Act of Aug. 1, 1956, Ch. 836, Title I, §10, 70 Stat. 815 (1956). In supporting the enactment of this amendment, Senator George again noted that categorical assistance is solely a program of last resort for persons whose needs cannot be met by other means including social security:

> ". . . As a progressive and enlightened Nation we have adopted the policy that assistance is a second line of defense, and that we want to rely on the tried and tested method of contributory social insurance to meet the major economic hazards of our industrial society . . ." 104 Cong. Rec. 13038 (1956).

There is no question that under 42 U.S.C. 1352(a)(8) the disability assistance benefits payable to Wilkes would have been reduced on a dollar-for-dollar basis, if his application for social security had been approved in a timely fashion and this had been brought to the attention of the county welfare board. In fact, the governing federal regulations specifically recognize that social security benefits represent income which must be taken into account in calculating the amount of an assistance grant. 45 C.F.R. § 233.20(a)(4)(i).

However, for reasons that are unclear on the record, there was a substantial delay by the Social Security Administration in approving Wilkes' application for a renewal of disability benefits. During this period, the county welfare board continued to pay him full welfare benefits without regard to his pending claim for social security. When the Social Security Administration finally approved the application for disability benefits, it made a lump sum

award to Wilkes for the period during which he should have been receiving monthly benefits. The county welfare board then brought this proceeding to recover the amount by which Wilkes' welfare benefits would have been reduced if the Social Security Administration had approved his application in a timely fashion, so that the total benefits would not turn on the fortuitous circumstance of when the federal agency acted.

While apparently conceding that the amount of welfare benefits could have been reduced by the amount of social security benefits if payment had been made monthly, the welfare board's claim for reimbursement was resisted on the grounds that it was barred by 42 U.S.C. 407, which provides:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

However, it is clear, as pointed out on pp. 7-10 of the Brief for the United States as *amicus curiae*, that this section was not intended to be an absolute bar to any recovery out of social security benefits. See *Beers* v. *Federal Security Administrator*, 172 F. 2d 34, 36 (2nd Cir. 1949); *Celebrezze* v. *Sparks*, 342 F. 2d 286 (5th Cir. 1965).* In fact, a companion section specifically provides

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* Needless to say, the recollections nearly forty years later of an individual responsible for securing enactment of the Act, as set forth in Appendix A to the petitioners' brief, should not be considered by this court as proper legislative history indicating a more far-reaching intent. *U. S.* v. *United Mine Workers of America*, 330 U. S. 258, 281-282 (1947).

that the Social Security Administrator may recover overpayments of social security benefits. 42 U.S.C. 404. Other sections of the Social Security Act clearly indicate that the overpayments which Congress authorized the government to recover under 42 U.S.C. 404 include duplicate social security benefits. 42 U.S.C. 402(g) contains extensive provisions to the effect that an individual who is eligible for dual benefit payments under two programs or two portions of a specific program may have his benefit payments reduced to avoid an overlap in benefit payments. 42 U.S.C. 402(k) provides that generally a person who may be entitled to more than one social security benefit at the same time—for example, a woman who is entitled to parent's benefits on her deceased child's social security account and also wife's benefits on her husband's social security account—may receive only the highest of the two benefit payments. Moreover, if a person is entitled for any month to both an old-age and a disability insurance benefit, he is entitled only to the larger of such benefits. 20 C.F.R. 404.353(c). Obviously, if a mistake is made and the government erroneously pays dual benefits contrary to any of the above provisions, the overpayment may be recovered pursuant to 42 U.S.C. 404. Hence the prohibition of 42 U.S.C. 407 against the enforcement of traditional creditor remedies out of social security benefits is qualified by the recognition in 42 U.S.C. 404 that a claim for the recovery of overpayment of government benefits should not be treated the same way as an action by a private creditor.

The recovery by the State of New Jersey of overlapping welfare benefits which never would have been paid if Wilkes' application for disability benefits had been approved in a timely fashion clearly falls within the congressional intention manifested by 42 U.S.C. 404, rather

than the restrictions upon ordinary private creditors' remedies established by 42 U.S.C. 407. A welfare agency which extends assistance to a needy person pursuant to one of the categorical assistance programs assumes a relationship with the recipient which is different from an ordinary creditor-debtor relationship. *Cf. Savoid* v. *Dist. of Columbia*, 288 F. 2d 851 (D. C. Cir. 1961); *In re Bemowski's Guardianship*, 3 Wisc. 2d 133, 88 N. W. 2d 22 (Sup. Ct. 1958). A welfare agency is legally required to pay assistance to needy persons who meet the eligibility criteria set forth within each categorical assistance program without regard to whether the person is a good or a poor "credit risk" or will ever be in a financial position to reimburse the agency for the assistance he receives. 42 U.S.C. 1352(a)(10). The recipient also enjoys certain rights, such as the right to social services, the right to have his income and resources computed in a specified manner, the right to a fair hearing upon agency action or inaction which aggrieves him, and in some circumstances the right to a continuation of assistance pending the determination of his grievances by the State welfare agency which prevent a welfare agency from resorting to the same remedies available to a private creditor. 42 U.S.C. 1352; 45 C.F.R. 205.10. There are also legal limitations not placed upon the ordinary creditor which may preclude a welfare agency from recouping funds expended by it or demanding reimbursement. 45 C.F.R. 233.20(a)(3)(ii)(d) provides that

> ". . . Current payments of assistance will not be reduced because of prior overpayments unless the recipient has income or resources currently available in the amount by which the agency proposes to reduce payment; except that where there is evidence which clearly establishes that a recipient wil-

> fully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the assistance payment in current or future periods . . ."*

Therefore, the danger that persons will be reduced to destitution by welfare agencies' claims for reimbursement or recovery of wrongfully received payments does not exist as it would in the situation where ordinary creditors proceed against a recipient to recover debts owed to them.

Finally, it must be emphasized again that the duplicate benefits for which reimbursement is sought in this case were paid under a section of the Social Security Act relating to categorical assistance which was intended by Congress to complement social security benefits. It is one of the most basic principles of statutory interpretation that where there are two acts upon the same subject the court should strive to give effect to both. *Menomenie Tribe* v. *U. S.*, 391 U. S. 404 (1968); *U. S.* v. *Zacks*, 375 U. S. 59 (1963). Here the appellants' contention that 42 U.S.C. 407 acts as a bar to the recovery of an overpayment of welfare benefits from a lump sum social security award fails to give full effect to the provisions of 42 U.S.C. 1352(a)(8) which requires all income and resources of a welfare recipient to be taken into account in calculating benefits. This contention is also irreconcilable with

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* As was noted by the New Jersey Supreme Court in its opinion, Petitioner Wilkes, was also the recipient of $92 per month from the Veterans' Administration in 1970. Pursuant to 42 U.S.C. 1352 this amount should have been considered by the Welfare Board in determining his eligibility for Disability Assistance, however this receipt of Veteran's benefits was not made known to the Board by Wilkes.

the principle that statutes are to be construed in a reasonable fashion (*U. S.* v. *American Trucking Association*, 310 U. S. 534, 543-544 (1939)), because it makes the availability of duplicate benefits turn on whether the social security administration approves an application for social security benefits promptly as well as encouraging applicants to seek delay in the processing of their claims. The court should, therefore, reject the premise that Congress was working at cross purposes when it enacted 42 U.S.C. 407 and 42 U.S.C. 1352(a)(8), and instead interpret the governing statutory provisions as establishing a *unified* program which does not authorize the payment of duplicate benefits.

CONCLUSION

It is respectfully submitted that for the foregoing reasons that the judgment of the Supreme Court of New Jersey should be affirmed.

Respectfully submitted,

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